

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

WP(C).No. 18896 of 2006(Y)

PETITIONER:

1. V.T.ANNIE,
W/O.P.V.MATHEW,AGED 70 YEARS,
NEEDLE WORK TEACHER (RETD.) MATHA HIGH SCHOOL
(RESIDING AT PADICKAL, NEAR COMPANY PADY OLLUR,
THRISSUR DISTRICT.
2. V.T.LILLY,
W/O.PULICKAN ANTONY (LATE),
AGED 72 YEARS,NEEDLE WORK TEACHER (RETD.)
MATHA HIGH SCHOOL, RESIDING AT KANJOORPADAM,
PUDUKKAD, THRISSUR DISTRICT.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:

1. THE STATE OF KERALA REPRESENTED BY ITS
SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, TRIVANDRUM.
2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY,TRIVANDRUM-14.
3. THE DEPUTY DIRECTOR OF EDUCATION,
AYYANTHOLE, THRISSUR.

BY GOVERNMENT PLEADER SHRI. MUHAMMED JAGIL M.P

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX IN W.P(C) 18896/06

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE G.O(MS) NO. 160/888.EDN. OF THE GOVT. DT. 14.10.1988

EXT.P2: -DO- OF THE G.O(P) NO: 356/94FIN. OF THE GOVERNMENT DT. 27.5.1994

EXT.P3: -DO- OF THE G.O(MS) NO: 51/95/G.EDN. OF THE GOVERNMENT DT. 15.3.1995

EXT.P4: -DO- OF THE ORDER NO: 4376/G2/2002/G.EDN. OF THE GOVERNMENT DT. 2.7.2002

EXT.P5: -DO- OF THE JUDGMENT IN O.P.NO: 23609/2002 DT. 20.9.2004

EXT.P6: -DO- OF THE REPRESENTATION SUBMITTED BEFORE THE 1ST RESPONDENT BY THE 1ST PETITIONER DT. 15.10.2004

EXT.P7: -DO- OF THE -DO- BY THE 2ND PETITIONER DT. 15.10.2004

EXT.P8: -DO- OF THE JUDGMENT OF THIS HONOURABLE COURT IN W.P(C) NO: 37071/2004-L DT. 22.7.2005

EXT.P9: -DO- OF THE HEARING NOTICE OF THE GOVERNMENT DT. 5.9.2005

EXT.P10: -DO- OF THE G.O(RT) NO: 5803/2005/G.EDN. OF THE GOVERNMENT DT. 15.12.2005

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/TRUE COPY/

P.A. TO JUDGE

K.BALAKRISHNAN NAIR & K.T.SANKARAN, JJ.

Writ Petition (C) No.18896 of 2006-Y

Judgment

Balakrishnan Nair, J.

The petitioners are retired Needle Work Teachers. The first petitioner retired from service on 31.03.1993 and the second petitioner, on 31.03.1990. Both of them were having part time service before the commencement of their regular service on 15.07.1971. They claim, 50% of their part time service should also be reckoned for computing the pensionary benefits. Similarly placed Teachers were granted the said benefit pursuant to the direction of this Court in Ext.P5 Judgment. The Government was directed by this Court to consider the petitioners' claim in the light of Ext.P5 Judgment. The Government rejected their claim by Ext.P10 order dated 15.12.2005. This Writ Petition is filed, challenging Ext.P10 and also praying for a direction to the respondents to reckon their part time service also for computing the terminal benefits. Reliance is placed on Ext.P5 Judgment of a learned Single Judge of this Court. When this Writ Petition came up for hearing, the learned Judge, who heard the matter found it difficult to follow Ext.P5 and therefore, the matter was referred to the Division Bench, to

avoid conflicting decisions.

2. We heard the learned counsel on both sides. According to the learned counsel for the petitioners, the petitioners in Ext.P5, who were similarly placed, were granted the benefit. As per Ext.P2 GO dated 27.05.1994, all persons who retired after the said date are eligible to count 50% of their part time service for pensionary benefits. The persons who retired earlier, are similarly placed and therefore, the Government should have extended the benefit to them also. Pointing out the precarious financial position of the Government, the benefit was declined. So, the learned counsel for the petitioners prayed, this Court may issue appropriate directions to the Government so that the petitioners can also get the aforementioned benefit.

3. We heard the learned Government Pleader appearing for the respondents also. He admitted that Ext.P5 has become final as no appeal has been filed against it. But, he submits, the said decision does not lay down the correct legal position. We notice that as rightly pointed out by the learned Single Judge in the reference order, Ext.P5 was rendered, relying on Rules, which were not relevant to the matter in issue. The benefit of reckoning the part time service for computing the pensionary benefits, is governed by Ext.P2

GO. Going by Ext.P2, the petitioners are not covered by it. Whether it should be extended to others also, who are not governed by the said GO, is a policy matter, which is for the Government to decide. This Court cannot, under Article 226 of the Constitution of India, direct the Government to extend the benefits to persons, who are not already covered by the said GO. Therefore, we find nothing illegal with Ext.P10, warranting interference with the same under Article 226 of the Constitution of India. The petitioners in Ext.P5 were granted the above said benefit, though they were ineligible. But, this Court cannot order repetition of an illegality to satisfy the requirement of Article 14 of the Constitution of India. Accordingly, the Writ Petition fails and it is dismissed.

K.BALAKRISHNAN NAIR,JUDGE

30.11.2007

K.T.SANKARAN, JUDGE

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